

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
(FORT WORTH DIVISION)**

NEXTGEAR CAPITAL, INC. AND
AUTOMOTIVE FINANCE
CORPORATION,

Plaintiffs,

v.

DRUIEN, INC. D/B/A LAWTON AUTO
AUCTION A/K/A LAWTON CACHE
AUTO AUCTION, LISA DRUIEN,
MICHAEL VERNON GARRISON D/B/A
ROCK HILL USED CARS, AND
EMMETT DRUIEN,

Defendants.

Civil Action No. 4:20-cv-00959-BJ

**AFFIDAVIT OF CHRISTOPHER V. ARISCO IN SUPPORT OF MOTION FOR ENTRY
OF DEFAULT UNDER FED. R. CIV. P. 55(a)**

I, Christopher V. Arisco, being first duly sworn upon his oath, deposes and says that:

1. My name is Christopher V. Arisco. I am an attorney with the law firm of Padfield & Stout, LLP (the “Firm”), and I am an attorney for NextGear Capital, Inc. (“NextGear”) and Automotive Finance Corporation (“AFC”) (collectively the “Plaintiffs”), in this action. I was admitted to the practice of law by the Supreme Court of Texas in 2008 and the United States District Court for the Northern District of Texas and Eastern District of Texas in January and February of 2009 respectively and the United States District Court for the Southern and Western Districts of Texas in October of 2011. I have continuously practiced law in Fort Worth, Texas since 2008, and I have never been the subject of any disciplinary action or complaint by the Texas State Bar Association, the Tarrant County Bar Association, or any Court to which I have been admitted to practice.

2. I am familiar with the file in the above-styled proceeding against Defendant Emmett Druien (“Druien”), the pleadings and papers filed herein, and the books and records of the Firm with respect to this action.

3. This is an action to seek a judgment concerning debt owed by Defendant Druien to Plaintiffs NextGear and AFC.

4. On March 25, 2021, Plaintiffs filed their Second Amended Complaint [Doc. 79] and added Emmett Druien to the defendants in this proceeding.

5. On March 31, 2021, the Summons in a Civil Action and the Plaintiffs’ Second Amended Complaint were served on the Defendant Emmett Druien by a private process server as stated on the Return of Service. Attached hereto as Exhibit “A” is the Return of Service showing the summons service executed on Defendant Emmett Druien, which was filed with the Court on April 22, 2021 [Doc. # 86].

6. Druien was required to plead or otherwise file an answer in response to Plaintiffs’ Second Amended Complaint by April 21, 2021, which time has expired.

7. Druien has failed to timely plead or otherwise file an answer in response to Plaintiff’s Second Amended Complaint as required by the Federal Rules of Civil Procedure.

8. DECLARATION OF NON-MILITARY STATUS: Upon information and belief, the Defendant named herein is not in the military service so as to be entitled to the benefits of the Soldiers’ and Sailors’ Civil Relief Act of 1940 (50 U.S.C. Appen. § 501, et seq.). Attached hereto as Exhibit “B” is the certificate provided after researching whether the Defendant was in military by examining the Soldier and Sailor Civil Relief Act (SSCRA) Web Site at <https://scra.dmdc.osd.mil> and conducting a search under the “Military locator” section. Accordingly, Defendant Emmett Druien is not in the military.

9. The Defaulting Defendant Emmett Druien is not, upon information and belief, either an infant or incompetent person.

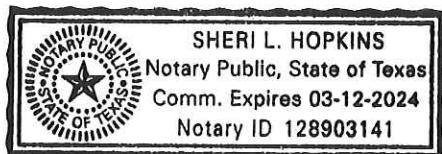
10. I affirm under penalties for perjury that the foregoing facts and statements are true and correct to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NOT

Executed this the 23rd day of April, 2021.


Christopher V. Arisco

SUBSCRIBED AND SWORN TO BEFORE ME on this the 23rd day of April, 2021, to certify which witness my hand and seal of office.



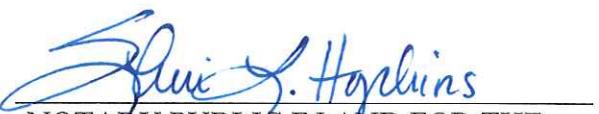

NOTARY PUBLIC IN AND FOR THE
STATE OF TEXAS

EXHIBIT A

RETURN OF SERVICE

UNITED STATES DISTRICT COURT Northern District of Texas

Case Number: 4:20-CV-00959-BJ

Plaintiff:
NEXTGEAR CAPITAL INC. ET AL.

vs.

Defendant:
DRUIEN INC ET AL.



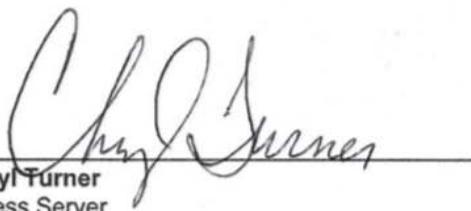
BBW2021003404

Received by Cheryl Turner on the 26th day of March, 2021 at 12:29 pm to be served on **EMMETT DRUIEN, 9 SW 112TH STREET, LAWTON, OK 73505**.

I, Cheryl Turner, do hereby affirm that on the **31st day of March, 2021 at 5:24 pm**, I:

INDIVIDUALLY/PERSONALLY delivered by delivering a true copy of the **SUMMONS IN A CIVIL ACTION /SECOND AMENDED COMPLAINT/ EXHIBITS A, B, C, D, E, F, G, H, I , J, K , L, M, N, O** with the date of service endorsed thereon by me, to: **EMMETT DRUIEN** at the address of: **9 SW 112TH STREET, LAWTON, OK 73505**, and informed said person of the contents therein, in compliance with state statutes.

"My name is Cheryl Turner my date of birth is 10/9/1970 and my address is 12284 Ne Trail Rd, Elgin, OK 73538. I declare under penalty of perjury that the foregoing is true and correct. Executed in Comanche County, OK on the 31 Day of March, 2021, Cheryl Turner declarant."



Cheryl Turner
Process Server

Pronto Process
1406 W Salinas
San Antonio, TX 78207
(210) 226-7192

Our Job Serial Number: BBW-2021003404



EXHIBIT B

Status Report Pursuant to Servicemembers Civil Relief Act

SSN:

Birth Date: Mar-XX-1956

Last Name: DRUIEN

First Name: EMMETT

Middle Name:

Status As Of: Apr-23-2021

Certificate ID: 21RKGYVSL2GX71

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects the individuals' active duty status based on the Active Duty Status Date			

Left Active Duty Within 367 Days of Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects where the individual left active duty status within 367 days preceding the Active Duty Status Date			

The Member or His/Her Unit Was Notified of a Future Call-Up to Active Duty on Active Duty Status Date			
Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA
This response reflects whether the individual or his/her unit has received early notification to report for active duty			

Upon searching the data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the status of the individual on the active duty status date as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard). This status includes information on a Servicemember or his/her unit receiving notification of future orders to report for Active Duty. **HOWEVER, WITHOUT A SOCIAL SECURITY NUMBER, THE DEPARTMENT OF DEFENSE MANPOWER DATA CENTER CANNOT AUTHORITATIVELY ASSERT THAT THIS IS THE SAME INDIVIDUAL THAT YOUR QUERY REFERS TO. NAME AND DATE OF BIRTH ALONE DO NOT UNIQUELY IDENTIFY AN INDIVIDUAL.**

Michael V. Sorrento, Director
Department of Defense - Manpower Data Center
400 Gigling Rd.
Seaside, CA 93955

The DoD strongly supports the enforcement of the Servicemembers Civil Relief Act (50 USC App. § 3901 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced only a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual was on active duty for the active duty status date, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service. Service contact information can be found on the SCRA website's FAQ page (Q35) via this URL: <https://scra.dmdc.osd.mil/scra/#faqs>. If you have evidence the person was on active duty for the active duty status date and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. § 3921(c).

This response reflects the following information: (1) The individual's Active Duty status on the Active Duty Status Date (2) Whether the individual left Active Duty status within 367 days preceding the Active Duty Status Date (3) Whether the individual or his/her unit received early notification to report for active duty on the Active Duty Status Date.

More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d) (1). Prior to 2010 only some of the active duty periods less than 30 consecutive days in length were available. In the case of a member of the National Guard, this includes service under a call to active service authorized by the President or the Secretary of Defense under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy Training and Administration of the Reserves (TARs), Marine Corps Active Reserve (ARs) and Coast Guard Reserve Program Administrator (RPAs). Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps).

Coverage Under the SCRA is Broader in Some Cases

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate. SCRA protections are for Title 10 and Title 14 active duty records for all the Uniformed Services periods. Title 32 periods of Active Duty are not covered by SCRA, as defined in accordance with 10 USC § 101(d)(1).

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of the SCRA extend beyond the last dates of active duty.

Those who could rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected

WARNING: This certificate was provided based on a last name, SSN/date of birth, and active duty status date provided by the requester. Providing erroneous information will cause an erroneous certificate to be provided.